

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

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EQUAL EMPLOYMENT OPPORTUNITY*	CIVIL NO. 6:22-CV-01000
COMMISSION,	* MARCH 21, 2023 10:35 A.M.
Plaintiff,	* STATUS CONFERENCE HEARING
	*
vs.	*
	*
COMMUNITY LOANS OF AMERICA	* Before:
INC., ET AL.,	* JACQUELYN D. AUSTIN
	* UNITED STATES MAGISTRATE JUDGE
Defendants.	* DISTRICT OF SOUTH CAROLINA

* * * * *

APPEARANCES:

For the Plaintiff:

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Michele Becker, RMR, CRR, RPR
US District Court
District of South Carolina

1 P R O C E E D I N G S

2 (Court convened at 10:41 a.m.)

3 THE COURT: You may be seated. Good morning.

4 MR. WOLFMEYER: Good morning.

5 MR. MOODY: Good morning, Your Honor.

6 THE COURT: How are you-all? Good morning. So, we
7 are here today in Case Number 22-1000, EEOC versus Community
8 Loans of America, et al. And so I know this is called a Rule
9 16 conference, but it's more like a status conference, I
10 believe. So what I wanted to do was start with the EEOC and
11 kind of go through some of the issues that you raised in your
12 letter to me from March 14th. So whoever wants to speak is
13 fine.

14 MR. WOLFMEYER: Thank you, Your Honor. Would you
15 like me to stand?

16 THE COURT: You don't have to. If you could pull
17 the microphone closer to make sure we hear you.

18 MR. WOLFMEYER: Good morning, Your Honor. May it
19 please the Court. The EEOC requested this hearing. This is a
20 case regarding -- in which the EEOC alleges that the claimant
21 was subjected to racial harassment and the Defendants have a
22 hundred percent HEAL-ed policy. The EEOC also alleges that
23 they're an integrated enterprise or a single employer. We
24 requested this status conference for the purposes of
25 eliminating some of the issues and not burdening the Court

1 with multiple motions that we have not been able to work out,
2 unfortunately, with the Defendants.

3 The first one -- I'll just go right down the list.
4 And feel free to stop me if you need clarification.

5 **THE COURT:** Okay.

6 **MR. WOLFMEYER:** The first one is that we are still
7 looking for dates for the 30(b)(6) depositions. We've been
8 working with Defendants on topics. We've narrowed them down
9 quite a bit, but at this point as you may know the discovery
10 deadline passed on March 16th. We filed a consent motion with
11 them to extend it another 60 days, but even to meet that
12 deadline we're going to need to get things scheduled pretty
13 soon.

14 **THE COURT:** Let me talk to the Defendants about the
15 30(b)(6) deposition dates.

16 **MR. WOLFMEYER:** Sure.

17 **THE COURT:** Don't let me put words in your mouth,
18 but I'm assuming you haven't scheduled the dates because
19 you're trying to resolve topic issues; is that correct?

20 **MR. MOODY:** Yes, Judge Austin. And if I may stand?
21 I'm more comfortable standing.

22 **THE COURT:** Sure.

23 **MR. MOODY:** Judge, I will tell you that we have many
24 cases here in the District because this is our home where we
25 deal with pro hoc issues and folks that don't know how we do

1 things locally. And I've tried to work with Mr. Wolfmeyer and
2 the Government and the Charlotte office to say, 30(b)(6)
3 issues, we have to confer. The Rule requires that. You give
4 us the topics, we go find the people or educate the people so
5 that we can present a witness. We communicated this with them
6 and I said all along, this is typically how we do things here.
7 And, you know, we're South Carolina, whatever. But we work
8 collegially and work together and we don't file motions.

9 I sent that email I think on January 11th saying we
10 need to meet and confer about topics. Judge, we've had no
11 less than I think three conversations about their topics.
12 They sent us two notices that are identical -- I sound like
13 "My Cousin Vinny" -- for both companies, and they were 45 to
14 46 topics. I had this in another case in Columbia with
15 Judge Hodges. And I told them, I said, Judge Hodges
16 admonished the other side. Said, you've sent a deposition
17 outline. There's no reason to have to present witnesses on
18 this. And I know they're being careful. They say, well, we
19 want to make sure the fact witnesses are covered and all that
20 kind of stuff. So, you can put words in my mouth because that
21 is exactly what happened. We have narrowed things down.

22 THE COURT: Right.

23 MR. MOODY: And as far as this integrated enterprise
24 issue. Like the last five, seven, six, eight, I don't know,
25 topics, deal with this integrated enterprise issue. And we

1 had a phone call. And I apologize. Time kind of is hazy
2 because two weekends ago my brother had a heart attack, so
3 I've been in the hospital. So things have been fuzzy for me.
4 And I said what is the purpose of these last seven to eight
5 topics. And they said, integrated enterprise. I said, well,
6 just tell us. We may stipulate to some of this stuff to move
7 things along. So, we are still trying to get those topics
8 narrowed. And once we get that we will identify witnesses.
9 Which go to a couple of next ones, like Lori Griffin. Lori
10 Griffin may be a fact witness that they want her as a fact
11 witness, but we think she's going to be a witness for
12 30(b)(6). And it is routine to present a witness, say here
13 are the 30(b)(6) topics she's presented for, and then go ask
14 her whatever fact questions.

15 Karen James. Karen James has been to town to be
16 deposed at 1:00 or 2:00 one day, and they went so long with
17 Wally Williams that poor Ms. James was sitting at her office
18 waiting to be deposed, and I took her to lunch just because
19 she's a witness in the bullpen. And finally they were talking
20 about starting her at four, five or 6:00 at night. I said,
21 no. This woman drove from Statesboro, Georgia, has family
22 coming to town tonight. She gets to go home. So Karen James
23 has been to town to be deposed, and because they took so long
24 with another witness we sent her home.

25 So, a lot of this -- I know they're being

1 protective. They don't want to be prejudiced. But I've told
2 them that this Court in this District knows we're working, and
3 everybody is pushing. But when they send 30(b)(6) topics that
4 are so wide ranging and we still haven't agreed to what they
5 are, we can't go bring witnesses.

6 **THE COURT:** Right.

7 **MR. MOODY:** So that's the big issue there, Judge.
8 And I'm sorry to be so long winded, but I think that disposes
9 of a lot of this conference.

10 **MR. WOLFMEYER:** Your Honor, may I respond?

11 **THE COURT:** Yes.

12 **MR. WOLFMEYER:** With regards to the 30(b)(6) since
13 that's come up repeatedly in opposing counsel's statement, we
14 have communicated with them 12 times regarding setting
15 30(b)(6) depositions going back to October 28th. I have those
16 communications here if you'd like to see them. If not that's
17 fine as well. We originally noticed the depositions on
18 February 3rd, which was -- and we noticed the topics on
19 January 24th. We've had multiple conversations on those
20 topics. After noticing those initially on February 3rd, we
21 got a motion filed three days before the depositions. That
22 included a fact witness, Lori Griffin, and that, you know, as
23 far as we know we don't know who they're going to present for
24 30(b)(6). We did present an extensive list of topics, about
25 35 or 40 for each defendant. And that's because at this point

1 based on a lot of, you know, the request for production, which
2 I also outlined, we don't know which of their people
3 controlled the decisions, who the decision-makers were, which
4 companies they work for. So of course they're going to be
5 identical.

6 And in Defendant's motion they bring up the list of
7 topics, and a number of them -- and also quote the case law
8 which talks about painstaking particularity. And when we're
9 being painstakingly particular, we're going to have a separate
10 topic for training on sexual harassment, or sorry, it's
11 training on racial harassment for this witness -- for this
12 person, I'm sorry, and also for this person who's also a
13 decision-maker. So that might be three topics out of the 35.
14 Really it's one. But we're being painstakingly particular.
15 We've worked with these Defendants multiple times. We've had
16 a lot of conversations. And a lot of these last few issues do
17 boil down to integrated enterprise.

18 Yesterday at 4:00, approximately 4:00, we got an
19 offer of some factual stipulations toward this issue to
20 resolve the issue. At this point we're still considering
21 those. But at this point because that's such a factually
22 intensive inquiry, you know, getting a couple stipulations as
23 to facts on the ownership or maybe some management of certain
24 employees, we don't know that that's going to establish
25 sufficiently for purpose of summary judgment, or judgment, or

1 potentially even for appeal, a fact that this is a single
2 employer. And he's right, that would resolve a lot of these
3 issues.

4 **THE COURT:** Okay. And you've got that, and you're
5 taking that into consideration; is that accurate?

6 **MR. WOLFMEYER:** We are.

7 **THE COURT:** Okay. Let me ask about the -- well,
8 Defendants not having provided a mediation date. We're going
9 to extend the scheduling order. That's probably not going to
10 be an issue, correct?

11 **MR. MOODY:** No, Your Honor. In fact, I think we've
12 agreed that Mark Bakker can be the mediator. I think they
13 want Carl Folkens. And if Mr. Folkens wants to come from
14 Florence to mediate, that's fine. My whole issue there is we
15 can't have a mediation -- I represent companies. Mr. Stern
16 represents companies. They're not going to come to a
17 mediation where everything has not been closed out. So, I've
18 reached out to Mr. Bakker's office, Mr. Folkens' office. I
19 believe they have as well. So they know that we want to
20 schedule a mediation and we were looking at April dates and
21 hopefully we can accomplish those dates. If not we will get
22 on their calendar as well. So, I mean, this whole "not
23 provided dates for mediation" that's, you know, we've done a
24 whole lot there, and I don't believe that captures what we've
25 done, Judge.

1 **THE COURT:** Right. So you would still try to do
2 mediation in April even with the amended scheduling order?

3 **MR. MOODY:** We will do mediation when our client is
4 able to talk to us, understand what's at play. I don't want
5 to do -- Randy Moody doesn't want to do a mediation and a
6 client goes, well, what about this, Randy. So we want to come
7 to mediation and if it's possible to close the case, close the
8 case. So if that's April, great. If it's in May, that's fine
9 too. But one of the struggles I've had is they want to
10 schedule stuff without it being ready. And it's always like,
11 you know, agree to this date and if you don't tell me by the
12 close of business tomorrow, we're noticing it. It's almost
13 like blind noticing. And I'm like, work with us here, you
14 know. Things are moving but we are happy to meditate the case
15 as long as it's ready to be mediated.

16 **MR. WOLFMEYER:** Can I just briefly correct the
17 record. So, we have since July 1st of last year, we've tried
18 to set up mediation dates according with the scheduling order
19 initially provided in this case. What you heard opposing
20 counsel say is -- really what he didn't say is, he said he did
21 not commit that they would have scheduled mediation in April.
22 He said he would do it when they were ready. Those are the
23 same type of responses we've had in six different
24 conversations about this.

25 **THE COURT:** Well, I can understand not wanting to go

1 to mediation until you've got your discovery. I mean, I
2 practiced for 13 years. I could not get a client to go to
3 mediation if I hadn't done the discovery and done my
4 groundwork on where their case stood, what the issues were,
5 what their strengths and weaknesses were, you know, if it was
6 going to be reasonable for them to go, go to mediation. So I
7 can understand that. So, lets --

8 **MR. WOLFMEYER:** Can I just say one more thing?

9 **THE COURT:** I'm thinking about granting the motion
10 to amend the scheduling order, so you'll have a mediation
11 deadline. What I'm concerned about is getting this case
12 moving so that you-all can have discovery done in a time where
13 mediation is practical in July or whenever you-all have it,
14 May.

15 **MR. MOODY:** Your Honor, it's my understanding --
16 again, I was a little bit dark during my brother's situation.
17 Mr. Stern has said they wanted the mediation deadline to
18 happen before discovery closed, and that's just not how we
19 normally do it with the Courts. But that's something we
20 yielded because they asked for it. But we would prefer to
21 have discovery closed and mediation as Your Honor's normal
22 scheduling orders.

23 **THE COURT:** Yeah. That's typically what I require.
24 I require discovery be completed before mediation.

25 **MR. WOLFMEYER:** Just for the record, it was

1 Defendant's suggestion that we keep the mediation date. All
2 of those dates are their dates. And they suggested meditating
3 before discovery closed. That was not our suggestion.

4 **THE COURT:** Okay. And local counsel?

5 **MS. LITTLEJOHN:** Kate Littlejohn, Your Honor.

6 **THE COURT:** Yes, ma'am. Are you involved in this?
7 I mean, you're local counsel. You know how things should
8 operate in the Court here, so I'm going to put the
9 responsibility on you to make sure that EEOC understands how
10 things operate here.

11 **MS. MALONEY:** And Your Honor, I appreciate that.
12 And we work, you know, as a team collaboratively. You know,
13 obviously in this day and age we talk regularly. I would just
14 echo what counsel has said about our repeated communication.
15 I would liken the communication we received to gaslighting. I
16 mean, it's when you reach out to someone 12 times to confer
17 and then you're accused of not conferring, that's exactly
18 gaslighting. And so this is what we are trying to resolve
19 here, we're trying to be collegial, trying to work together.

20 **THE COURT:** Right.

21 **MS. LITTLEJOHN:** And we do that. We're here to do
22 that. We just filed the motion. So, yes, I will do that,
23 Your Honor. I appreciate it.

24 **THE COURT:** I appreciate it. Let's see. So if
25 you-all can agree on the discovery deadline, we will use our

1 calculator to calculate the rest of the deadlines. So, I'll
2 leave that in your court. You-all agree on when you believe
3 discovery -- how much time you need to complete discovery.

4 So the EE0C is saying that the Defendants have not
5 produced documents in response to their second request for
6 production. Is that still outstanding as well?

7 **MR. WOLFMEYER:** Yes, Your Honor.

8 **THE COURT:** Okay.

9 **MR. STERN:** Your Honor, I would just address that a
10 lot of those topics deal with the integrated enterprise. And
11 many of those topics too were requested -- the documents were
12 requested in the first request for production that we objected
13 to that they then waited past 21 days and simply sent new
14 requests. So we filed the same objections in response. So, I
15 mean, we have responded to them with objections.

16 **MR. WOLFMEYER:** Again, the requests were different.
17 We've requested operating statements, articles of
18 incorporation, things that go towards integrated enterprise.
19 And this is obviously in anticipation toward the 30(b)(6)
20 conference which is yet to be scheduled. They're not the
21 same. That's all I can say.

22 **THE COURT:** So are they past due?

23 **MR. WOLFMEYER:** These responses are past due.
24 Defendants at this point have given us -- we're going to try
25 to work it out to March 31st, and at that point we'll file a

1 motion to compel.

2 **MR. STERN:** Your Honor, those responses -- I
3 responded timely to his discovery request. They're not past
4 due.

5 **THE COURT:** Okay.

6 **MR. WOLFMEYER:** To correct the record, he -- they
7 responded on March 6th. At this point with the, again, the
8 motion to compel you have 21 days. That's been extended till
9 the 31st. So you're correct. I'm sorry, Mr. Stern.

10 **THE COURT:** Okay. So, have you-all discussed the
11 objections at all?

12 **MR. STERN:** I think the objections go -- so my hope,
13 Your Honor, is that we're able to come to an agreement on
14 the -- and the joint stipulation goes to the integrated
15 enterprise. My hope is that we can, you know, eliminate
16 multiple topics, discovery requests by agreeing to facts which
17 show the integrated enterprise and hopefully can eliminate,
18 you know, questions, topics, requests there.

19 **THE COURT:** Okay. So, if it comes to a point where
20 you need to file a motion to compel, if you could let me know
21 first so that we can get together and try to resolve them.
22 Yes, sir.

23 **MR. MOODY:** Thank you, Judge Austin. One thing that
24 I do want to make sure that the Court has a little visibility
25 to, the Plaintiff was deposed last Thursday on the 16th.

1 Mr. Stern took that deposition. There were a couple of things
2 that concerned us. And we're not ones to squawk or file
3 motions. You know that. But one of the issues we've
4 experienced here is the EEOC and whether Shenaka Jenkins is
5 our client and what the status of that is because that's news
6 to us. We've just never really dealt with that. We sent a
7 medical authorization. She nor the EEOC would execute that
8 medical authorization because she has, you know, claims of
9 damages. We did -- Mr. Stern with Mr. Wolfmeyer, maybe others
10 of their team, agreed that the EEOC could subpoena providers,
11 get that information and then provide it to us. Unfortunately
12 we are not sure that all of the providers were subpoenaed,
13 number one.

14 We did not receive the information prior to her
15 deposition. They supplemented a lot prior to her deposition
16 the evening before. So there may be an issue where we need to
17 reopen and/or we may need the Court's assistance on a medical
18 authorization if she's going to claim these damages to ensure
19 that we've covered the landscape, because as lawyers for the
20 company, you know, obviously we're trying to look out for
21 ourselves and we're trusting the government and Ms. Jenkins.
22 But after her deposition, we're not real confident about that
23 because she pled the Fifth on a lot of things as well. So
24 that is kind of one footnote or item that I do want to mention
25 to this Court. So if something develops in the coming weeks,

1 I didn't want to surprise you as we were working through that
2 issue as well.

3 **THE COURT:** Okay. And Mr. Wolfmeyer, on the motion
4 to compel, if you-all are talking about the, you know, as you
5 talk about the production and you don't believe the issue has
6 been resolved with respect to their objections, if you can
7 file another status report with the Court, and I'll say by the
8 30th, by March 30th.

9 **MR. WOLFMEYER:** Yes, Your Honor.

10 **THE COURT:** Then we'll go from there on that issue.
11 Okay. I think -- have we covered everything in the
12 letter? Anything else in the letter we need to address?

13 **MR. WOLFMEYER:** The last thing would be, we -- as
14 opposing counsel mentioned earlier, we had noticed two
15 depositions for one day. Defendants did not want to leave the
16 deposition open and start at 3:00. So we agreed to reschedule
17 that. We're in the process of rescheduling that with
18 Defendants. It's just there so the Court's aware of it.

19 **THE COURT:** Okay. And with respect to rescheduling
20 the depositions, if you-all can confer about that as well and
21 provide a status report to the Court. I'll give you until the
22 27th on whether or not dates have been selected for those,
23 which takes us to the topics. So March 27th regarding depo
24 dates.

25 Okay. So, I'm not sure who filed this status report

1 that I got this morning.

2 **MR. STERN:** I think that was me, Your Honor, Frank
3 Stern.

4 **THE COURT:** So, Mr. Stern, let's go to topics 37, 38
5 and 39.

6 **MR. STERN:** Your Honor, I don't have those in front
7 of me, but I'm aware of the substance of those topics.

8 **THE COURT:** Okay. So, 37, 38 and 39, I'm not going
9 to put words in your mouth, but I think those go to the
10 integrated employer -- integrated employer issue, correct?

11 **MR. WOLFMEYER:** That's correct, Your Honor. That's
12 correct.

13 **THE COURT:** Okay. So, let me ask Mr. Wolfmeyer, so
14 if you -- if they provide or they provide someone who can
15 testify as to the corporate structure, subsidiaries, and
16 owners of the Defendants, would that cover all three topics?

17 **MR. WOLFMEYER:** For 37 through 39, yes, it would.

18 **THE COURT:** Okay. Do the Defendants have anyone who
19 can discuss those issues?

20 **MR. STERN:** Your Honor, I believe we do. One of
21 the, you know, objections is the fact that this company
22 operates, you know, I don't know the exact number, but a lot
23 of subsidiaries across the country. And, you know, if we have
24 someone who can just discuss the basic structure. But asking
25 someone, you know, this subsidiary in Montana, it has a branch

1 there. But the problem that we keep running into is the
2 breadth of these topics. So what we would hope to do, and I
3 think that we have attempted to stipulate that here is the
4 corporate structure, you know, the CLAs, community loans in
5 this case operates and, you know, provides management
6 services, and that's kind of the substance of our stipulation
7 in a hope that we don't have to further object to provide
8 someone on that topic that I'm not sure that we could even
9 find someone who could really testify to that very broad topic
10 due to the nature of the company.

11 **THE COURT:** How broad is the EEOC looking to go on
12 this based on the claims brought in this case?

13 **MR. WOLFMEYER:** So -- I'm sorry, were you done
14 talking?

15 **THE COURT:** Go ahead.

16 **MR. WOLFMEYER:** So, as far as corporate structure,
17 they've stated that they have other subsidiaries. We've had
18 depositions. I think we're up to ten to 12. Really it boils
19 down to two things, are they an integrated employer, and do
20 they have more than 500 employees. That's all it boils down
21 to.

22 One of their deponents did talk about I think a
23 Montana organization. We're not concerned with what happens
24 with that. Really we want to know how many employees they
25 have and how integrated they are.

1 **THE COURT:** Okay. Is there an -- easier may not be
2 the right word. Is there a more efficient way to get that
3 information? I mean, without asking them to provide you
4 information on -- it sounds like you're asking about every
5 subsidiary, every affiliate company --

6 **MR. WOLFMEYER:** Right.

7 **THE COURT:** -- that's associated with this, I guess
8 with the main company, Community Loans?

9 **MR. WOLFMEYER:** Right. So, the claimant in this
10 case worked for Carolina Title Loans. All of the management
11 worked for Community Loans of America. Community Loans is the
12 parent company from what we understand. As far as the
13 corporate structure, what we're looking for there is just the
14 management, who are they, you know -- we go to the elements,
15 right? Integration -- excuse me, interrelation of operations
16 and also shared labor relations. Those are the issues that
17 we're looking at in particular on that subject.

18 **THE COURT:** Okay. Is that in between just Community
19 Loans of America and Community Title Loans, or between
20 Community Loans of America and anyone else that they have?

21 **MR. WOLFMEYER:** Right.

22 **THE COURT:** A relationship with -- I guess that's
23 where I'm confused.

24 **MR. WOLFMEYER:** I understand. So, to clear up the
25 confusion, at the -- when these were drafted and then edited

1 to narrow the topics, we did not -- at the time Defendants had
2 indicated that one of the companies had about 150 employees.
3 The other about 200. And the latest deposition we have a
4 division vice president say he managed over 600 employees, and
5 there was three other division vice presidents at the time.
6 So, if there ends up being a stipulation that there is over
7 500 employees, we don't have any other questions about any
8 other employer other than Carolina Title Loans or Community
9 Loan.

10 **THE COURT:** Yes, sir.

11 **MR. MOODY:** Your Honor, thank you. And Mr. Stern
12 may want to add onto this because he's been handling it more
13 so than I have. I think we've offered to stipulate that
14 there's more than 500 employees, and that's a more efficient
15 way as the Court has indicated. And I would add, I've asked
16 what is the EEOC trying to do. Are you asking for nationwide
17 relief, et cetera. Mr. Wolfmeyer, in one of our recent
18 conversations said, no, Randy. So we've had the same concerns
19 and questions the Court had, and we're getting there, but it's
20 been a process.

21 I would add, Judge, that Carolina Title Loans like
22 many other businesses was greatly affected by COVID. They
23 have storefronts. Ms. Jenkins worked for a brief period of
24 time at the one on Pleasantburg. That has now gone dark. One
25 of the unique aspects of this case that troubles us as the

1 Defendant is that each one of the storefronts are staffed by
2 two people. I mean, two people. And their disability claims
3 come from a wreck that she had prior to being employed by us.
4 And then she went out and never completed leave paperwork. So
5 this disability stuff, all that, the uniqueness here is it's
6 small storefronts. And that's why we've been trying to find
7 out why are we doing all this organization stuff. So, I think
8 we've stipulated to the 500 or more. Whatever other stuff
9 hopefully we can resolve as well so that we can dispose all
10 those topics.

11 **MR. STERN:** Your Honor, I would just say that
12 their -- you know, what Mr. Wolfmeyer and I worked out is we,
13 you know, on the phone before I sent him the joint stipulation
14 or the proposed from our side and said that, you know, here
15 are the elements of the integrated enterprise, you know,
16 interrelation of operations. Well, it's difficult to actually
17 write out, "these operations are interrelated without". So we
18 put in, you know, that CLA provides management services, legal
19 services, payroll, and those types of services to Carolina
20 Title Loans. And I think that, you know, my hope is that they
21 would agree that that is sufficient to establish what they
22 want to establish instead of just saying, no, that's not
23 enough, we still want to do topics on this because we don't
24 think that that's good enough. But we basically stipulated to
25 all of the factors there and stipulated finally to the 500

1 employees.

2 **THE COURT:** Okay. So what I'll ask the EEOC to do
3 is to look at the stipulation to see if that resolves your
4 ability to establish those elements if this case were to go to
5 trial. I'm not handling your case for you, so I don't want to
6 tell you that that should be enough.

7 **MR. WOLFMEYER:** I can respond, Your Honor.

8 **THE COURT:** It might not be, so...

9 **MR. WOLFMEYER:** I can respond in part at this time.
10 So yesterday at 4:00 we received these stipulations of factual
11 things. If the stipulation is at this point that they have
12 more than 500 employees, with Your Honor's questions about
13 answering questions about all our subsidiaries and affiliated,
14 we can stop that right now if that's the stipulation, if they
15 are willing to offer that and accept it.

16 As far as the other facts that they're putting in
17 there, I think if you go back to the answer to the complaint,
18 all the facts that we have leading to integrated enterprise
19 alleging in the complaint they've admitted to except for the
20 legal conclusion that they're an integrated enterprise, I've
21 been in a fair number of hearings regarding integrated
22 enterprise. I've looked at case law. I have -- it's a very
23 factual intensive inquiry. I have yet to find more than --
24 have yet to find a case where the Defendants stipulated to
25 more than one element without stipulating to the fact that

1 they are a single employer. So I just don't know what that's
2 going to be, but we'll look at it.

3 **THE COURT:** Okay. So, again, when you file your
4 status report on, I believe I said the 27th on the deposition
5 dates, if you-all can let me know on that date as well. And I
6 believe if they -- if the Defendants stipulate, make a
7 stipulation that you just outlined, would that take care of
8 topics 37, 38 and 39?

9 **MR. WOLFMEYER:** When you say "the stipulation", are
10 you talking about the 500 employees or also --

11 **THE COURT:** Yes. And whatever other elements you
12 need for the integrated employer.

13 **MR. WOLFMEYER:** Right. So the corporate structure
14 goes towards a couple different elements of the integrated
15 employer. But 37 and 39 would be taken care of, could be
16 potentially taken care of there.

17 **THE COURT:** Okay. Okay. Now, let's go to 38.
18 Without putting words in Mr. Stern's mouth, I think the issue
19 here would be all subsidiaries and affiliated entities. I
20 think he indicated earlier that that would be hard for them to
21 find one person that could testify to that. So is there a way
22 to narrow the structure that you need to see that's relevant
23 to this, to the issues in this case?

24 **MR. WOLFMEYER:** With regards to number 38?

25 **THE COURT:** 38, yes.

1 **MR. WOLFMEYER:** With the stipulation that they have
2 500 or more employees, we could limit the corporate structure
3 to only Community Loans and Carolina Title Loans. That would
4 take out of the affiliates and subsidiaries.

5 **THE COURT:** Okay. So, again, once you get the
6 stipulation, if you can agree to limiting the corporate
7 structure to just, you said Community Title Loans or Community
8 Loans of America and Community Title Loans?

9 **MR. WOLFMEYER:** I'm sorry. Carolina Title Loans and
10 Community Loans, or just both defendants?

11 **THE COURT:** Both defendants.

12 **MR. WOLFMEYER:** Yeah.

13 **THE COURT:** Is that agreeable?

14 **MR. STERN:** Yes, Your Honor.

15 **THE COURT:** Okay. So you-all just let me know in
16 the status report that you do on the 27th.

17 Okay. Now to 41. I just thought that was -- this
18 one is very broad. Contracts held with Community Loans of
19 America. Like all contracts? I mean, contracts with the
20 cleaning lady, contracts with -- like, which contracts?

21 **MR. WOLFMEYER:** So, we've since narrowed it to the
22 following, Your Honor. I'll read it for you in the record:
23 Service contracts, consulting contracts, building contracts,
24 human resources contracts, and payroll contracts held with the
25 Community Loans of America.

1 Just all of those contracts go towards the case law
2 where they're finding integration -- excuse me, interrelation
3 of operations, which is an element of the integrated
4 enterprise.

5 **THE COURT:** Okay. And this one would not be
6 resolved by the stipulation?

7 **MR. WOLFMEYER:** If there was a -- to be honest, if
8 the stipulation was that they were a single employer, all of
9 these would be resolved. I don't know what facts -- I mean,
10 potentially there's always facts that would resolve this
11 situation. We can work on those facts with the Defendants,
12 and we're happy to do so.

13 **MR. STERN:** Your Honor, that question I guess you
14 know your inquiry with the janitor and custodians contract,
15 service contracts, that would probably still apply there. I
16 mean, even with the narrowing to service contracts, payroll
17 contracts, there's -- we don't have someone who can talk to
18 every single contract that the company has which is still, I
19 think, included basically in their list there.

20 **THE COURT:** Okay. I either read or heard someone
21 say earlier that Community Loans of America provides kind of
22 like the management services for Title Loans, so provides
23 their payroll, provides their HR, provides -- was that you,
24 Mr. Moody?

25 **MR. STERN:** Your Honor, that was me, and that is a

1 component of our proposed joint stipulation to them.

2 THE COURT: Okay.

3 MR. WOLFMEYER: So we're evaluating that. I will
4 say two things on that. One, that does seem to cover for the
5 most part the shared labor relations, the integration of
6 operations. There's a really instrumental case, and we're
7 happy to brief this if you want, but, and it's about a horse
8 farm, and it's called the *EEOC versus Alfred*. It's a Fourth
9 Circuit case. And in that case they literally go down to
10 who's paying for the horses. Is money being exchanged. Are
11 these armorance (sic) agreements. All of these things are
12 integrated and goes towards interrelation of operations.

13 THE COURT: Okay. I guess what I'm trying to figure
14 out is if the stipulation that they were trying to offer
15 earlier, if there are any elements that could be added to the
16 stipulation that they would agree to, that would resolve this
17 issue.

18 MR. WOLFMEYER: And I'm sympathetic toward that.
19 And to be honest, if there's a certain stipulation that we can
20 get, again, this is such a fact intensive inquiry to stand up
21 on, you know, purposes of judgment in this case, and also
22 potentially purposes of an appeal that we need, you know,
23 facts in the record, obviously. The easiest thing, again,
24 would be just to stipulate to that element, integration of --
25 interrelation of operations. But, you know, potentially

1 there's facts that we could at some point reach an agreement
2 where, you know, that would constitute that element. I guess
3 what we're being cautious about is if we do file a motion for
4 summary judgment on the issue, if we have enough facts in the
5 record to, you know, withstand scrutiny and also to get a
6 judgment on.

7 **THE COURT:** Okay.

8 **MR. STERN:** Your Honor, I would just say that the
9 issue that I think I can kind of see just arising is that, you
10 know, we stipulate to each element and they say, that's not
11 good enough. And then they're saying we still need to go into
12 these topics. I mean, we've -- you know, as your question is,
13 if we stipulate that CLA does all these different things for
14 Carolina Title Loans, does that eliminate the -- is that the
15 41st topic? And the answer -- and our position would be, it
16 does. And if they want to say that we don't think it does
17 therefore then the topic becomes relevant, my just hope is
18 that we can I guess not necessarily meet again but just have
19 the opportunity to say, you know, this is to satisfy each one
20 of these elements. And if they need additional facts, then
21 they can tell us what facts they may need, and we can try to
22 stipulate to those. But as written, I mean, I went through
23 the elements and just stipulated to them.

24 **MR. WOLFMEYER:** Okay. And so if we had all four
25 elements stipulated in the Fourth Circuit, that would be

1 sufficient. But we have not gotten that offer yet.

2 **THE COURT:** Okay. Well, we're going to add
3 number 41 to your status report.

4 Let's go to 43. I could guess as to why you're
5 asking this question, but I will let you tell me.

6 **MR. WOLFMEYER:** So, I'll read to you what we
7 narrowed the topic down to. So as of this time it says: The
8 signatories in terms of the lease for the building and/or lot
9 located at 1295 South Pleasantburg Drive, Suite A, Greenville,
10 South Carolina, 29605 during the time period of October 1st
11 2019 and November 25th, 2019.

12 That is what we're looking for. Again, it goes
13 towards integrated enterprise, looking to see who's on the
14 lease, who's paying for the lease, that type of thing.

15 **THE COURT:** Okay. So is that a 30(b)(6) topic or is
16 that a discovery request? Can they just provide you the
17 lease, a copy of the lease?

18 **MR. WOLFMEYER:** That would be sufficient.

19 **THE COURT:** Okay. So are you-all willing -- I don't
20 want to hear later that he can't ask you to provide it because
21 discovery deadline passed. Are you willing to provide that?

22 **MR. STERN:** Your Honor, I'll ask the client to
23 provide the lease.

24 **THE COURT:** Okay.

25 **MR. STERN:** It was years ago. I would hope they

1 still have a copy of that lease. But I don't see that being
2 an issue.

3 THE COURT: Okay. So you-all let me know.

4 MR. WOLFMEYER: We will. We'll include that in the
5 status report for you as well.

6 THE COURT: Okay. Now to 42. This is for the
7 Defendants. I'm curious about your objection because I know
8 in the complaint they did ask for punitive damages. And I
9 believe Section 1981(b) allows the recovery of punitive
10 damages. So if you can explain to me why this information
11 would be irrelevant. You're saying their claim for punitive
12 damages isn't viable.

13 MR. STERN: Your Honor, we believe that the claim
14 isn't viable and therefore irrelevant. That, you know, just
15 simply filing a case against a defendant does not, I guess,
16 allow you to get into sensitive financial information. And I
17 think that that's what happened here. And I think the case
18 law supports there has to be at least a prima facie case of
19 punitive damages to allow for, you know, an inquiry into
20 financial information. So that would be our position.

21 This is just not a punitive damages case. We don't
22 think extensive sensitive financial information is relevant at
23 this time. But, Your Honor, as I've worked out with parties
24 before when it becomes relevant, you know, and certainly like
25 a bifurcated trial or anything -- kind of like, you know, I'm

1 not saying that that data will also be irrelevant in every
2 single case, but just that it's just currently not relevant in
3 this case.

4 **THE COURT:** So is there some case law that says that
5 they can't ask for this until they've passed summary judgment?

6 **MR. STERN:** It actually doesn't say -- you know, the
7 Courts have been very wary of when it becomes relevant or
8 what's showing that the Plaintiffs have to make. And I think
9 it's like *Nix versus Holbrook* I think is one of the cases that
10 discusses that. But it just says, you know, the general
11 premise that asking for punitive damages in the complaint does
12 not grant you the ability to get sensitive financial
13 information from a company or an individual in a case.

14 **MR. WOLFMEYER:** So, if I could briefly respond, Your
15 Honor. We're not interested in pouring over stock sheets and
16 ownership. This is relevant for punitive damages. Defendants
17 have given us a case, a personal injury case that does say in
18 South Carolina there's no controlling Fourth Circuit appellate
19 case. But in South Carolina District Courts they do require a
20 prima facie case. The case also says that because at the time
21 those -- where that case was in discovery, it wasn't near the
22 end of discovery. They could get it in other ways. At this
23 point if deadline -- the discovery -- excuse me. If the
24 discovery deadline is extended it's possible we could get that
25 in other ways. But we have pled punitive damages. As

1 opposing counsel stated, most of these stores operated with
2 two people. We have an African-American woman who was
3 repeatedly called the N word in a store.

4 **MR. STERN:** Your Honor, that is not the allegations
5 in this case.

6 **THE COURT:** I've read the complaint.

7 **MR. STERN:** Okay. Well, that's --

8 **MR. WOLFMEYER:** So we believe that punitive damages
9 are appropriate.

10 **THE COURT:** Okay. So, help me with this. I have
11 not read the case law, and my employee expert over here, I
12 have not asked her the question. So to show a prima facie
13 case is it I guess just pleading it is not sufficient? Does
14 that mean you go through discovery and then you ask for this
15 information? You-all tell me how this works.

16 **MR. WOLFMEYER:** So, I'll tell you what I've found in
17 some pretty extensive research, is that there's no definitive
18 standard of when it's appropriate. There is case law that
19 says you do not have to wait until the summary judgment stage.
20 The cases that have denied it have typically come earlier in
21 the discovery process. In the prima facie case as far as, you
22 know, whether you want to have a hearing on it, whether you
23 want to brief, but we feel we have that for information
24 through the depositions we've already taken.

25 **THE COURT:** Okay. I think I probably need some

1 briefing on topic 42.

2 MR. WOLFMEYER: Okay.

3 THE COURT: So, I guess you won't be able to set a
4 deposition on topic 42 until you-all brief that to me and then
5 we have a chance to look at it and decide whether you can get
6 that information now or have to wait until some later time.

7 MR. WOLFMEYER: Thank you, Your Honor.

8 THE COURT: Okay. When do you-all want to provide
9 that? I hate to make everything due on the 27th.

10 MR. WOLFMEYER: Whatever you need, Your Honor, we'll
11 make it happen.

12 THE COURT: Well, you-all tell me when you can have
13 it. I mean, you-all might have it done already, can give it
14 to us tomorrow.

15 MR. MOODY: Your Honor, I don't take many vacations,
16 but I'm going to Louisville this weekend because I have really
17 good friends. So I would like not to stack up the 27th and
18 the 30th on this. Maybe put this into April just a tad bit.
19 That would help me.

20 MR. WOLFMEYER: We're agreeable with that for the
21 reason, I mean, we do want you to enjoy your vacation, but
22 also we need transcripts from recently available depositions
23 that should be there by then.

24 THE COURT: Okay.

25 MR. STERN: Datewise I think mid April, I think.

1 **THE COURT:** Well, I tell you what --

2 **MR. STERN:** To make sure -- we took a deposition
3 last Thursday that we would also need for purposes.

4 **THE COURT:** In your status report for the 27th you
5 let me know what date you'd like to provide briefing in on
6 topic 42. And Ms. Littlejohn, you're in charge to keep
7 everybody --

8 **MS. LITTLEJOHN:** I'm in Greenville, South Carolina.
9 My office is up the street. I live around the corner. I'm as
10 local as local can get. I'm happy to go meet with these
11 gentleman. I actually know Mr. Stern quite well. So we have
12 a good relationship.

13 **THE COURT:** Okay. And I'm just joking with you.

14 **MS. LITTLEJOHN:** I know. I know. I just want to
15 make sure it's clear.

16 **THE COURT:** Yes. Okay. Is there anything else?

17 Can you-all let us know by the end of the day on
18 Thursday what you'd like your discovery -- what your discovery
19 deadline needs to be. I think right now you have it pushed
20 out two months, is that accurate? Which you may need more
21 time to give us time to rule on all of the topics and kind of
22 get you-all through this. So, you-all can talk and let us
23 know how much more time you need for discovery and, you know,
24 be realistic with yourselves. Don't say you need two months
25 if you know you're going to need four.

Michele Becker, RMR, CRR, RPR
US District Court
District of South Carolina